

Application № 10/658,578
Reply to Office Action of August 5, 2009

REMARKS / ARGUMENTS

The present application includes pending claims 29-53, all of which have been rejected. The Applicant respectfully submits that the claims define patentable subject matter.

Initially, the Applicant notes that a goal of patent examination is to provide a prompt and complete examination of a patent application.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the *initial* review of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel *should* state *all* reasons and bases for rejecting claims in the *first* Office action. Deficiencies should be explained clearly, particularly when they serve as a basis for a rejection. Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

See Manual of Patent Examining Procedure (MPEP) § 2106(II). As such, the Applicant assumes, based on the goals of patent examination noted above, that the present Office Action has set forth “all reasons and bases” for rejecting the claims.

Claims 29-53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 6,771,661 (“Chawla”), in view of USP 7,197,244 (“Thomas”). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

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REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 (“MPEP”) states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

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I. The Proposed Combination of Chawla and Thomas Does Not Render Claims 29-53 Unpatentable

A. Independent Claims 28, 37 and 45

With regard to the rejection of independent claim 28 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Chawla and Thomas does not disclose or suggest at least the limitation of “allocating at least a portion of said reserved bandwidth for use by said one or more of said first access device, said first access point and/or said first switch; utilizing said at least a portion of said reserved bandwidth during said communication session; and utilizing at least an unused remaining portion of said reserved bandwidth during at least a second communication session,” as recited by the Applicant in independent claim 28.

The Office Action states the following:

With respect to claims 29, 32, 37, 40, 48 and 45, Chawla teaches a method for bandwidth management and sharing in a hybrid wired/wireless local area network (which consider as a system and method are provided which enable a data communications device to be programmed to automatically and dynamically modify allocation of resources), the method comprising:

reserving bandwidth for one or more of a first access device, a first access point and/or a first switch (col. 6, lines 17-29);

in response to a communication session associated with said one or more of said first access device, said first access point and/or said first switch, *allocating at least a portion of said reserved bandwidth for use by said one or more of said first access device, said first access point and/or said first switch (e.g. block 250 in fig. 3);*

utilizing said at least a portion of said reserved bandwidth during said communication session e.g. the reserving bandwidth is for communication between blocks in Fig. 3); and

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Chawla fails to teach utilizing at least an unused remaining portion of said reserved bandwidth during at least a second communication session, but Thomas teaches utilized the remaining portion of the reserved bandwidth for a second communication session (see col. 30, lines 26-36) for reducing unused bandwidth and using the efficient bandwidth. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to implement the method of Thomas into Chawla's invention to eliminate unused bandwidth in communication system.

See Office Action at pages 2-3 (emphasis added). The Applicant respectfully disagrees with the above argument. Referring to Fig. 3 of Chawla, the network policy server 250 simply maintains and distributes the network policy resource allocation table 400 to each data communications device 201 on a periodic basis, where the resource allocation table 400 is a data structure that indicates what the prescribed bandwidth is for the specific time of day. **Fig. 3 of Chawla, however, does not disclose any allocating of a portion of reserved bandwidth for use by an access device, access point and/or a first switch.** (Chawla only discloses using the table 400, which indicates the entire bandwidth for the specific time of day, i.e., **Chawala allocates an entire bandwidth for use during a certain time of the day**). See Chawla at col. 14, lines 35-64.

Chawla further discloses that resource allocations can be made by bandwidth reservations provided to a data communications device via a network policy or via individual bandwidth reservation messages. The bandwidth allocation information can specify a session of data communication and future bandwidth modification information, such as a time or event that will cause the data communications device to modify an

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amount of bandwidth reserved for the specified session of data communications. In other words, **Chawla does not make a specific bandwidth reservation for purposes of using a portion of the reserved bandwidth and then using an unused remaining portion of the same reserved bandwidth. Instead, Chawla allocates resources by making entirely new bandwidth reservations (or modifications) every time the bandwidth requirements change.** This is exactly what is disclosed in Chawla's Fig. 4B and the bridging paragraph between columns 13 and 14 (relied on by the Examiner in the above argument).

More specifically, Chawla in Fig. 4B describes how different bandwidth reservations can be made based on the time of day (no bandwidth reservation for voice data required during 7pm to 7am; 2Mbps bandwidth reserved for 7am-5pm; 4Mbps of bandwidth reserved for 11.30am-12.30pm and 5.30pm-7pm time slots). Again, Chawla does not make a specific bandwidth reservation for purposes of using a portion of the reserved bandwidth and then using an unused remaining portion of the same reserved bandwidth, as recited in Applicant's claim 29. Thomas does not overcome the above deficiencies of Chawla.

The Examiner concedes that Chawla fails to teach "utilizing at least an unused remaining portion of said reserved bandwidth during at least a second communication session," and then relies for support on col. 30, lines 26-36 of Thomas. Thomas, at col. 30, lines 26-36, simply describes several kinds of service level agreements (SLAs). More specifically, Thomas discloses strict and relaxed SLAs, where the relaxed SLAs

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allow oversubscription of network resources by the service provider. More specifically, to oversubscribe, the service provider only promises more bandwidth than he has the technical capacity to deliver. However, Thomas (at col. 30, lines 26-36 or any other citation for that matter) does not disclose any utilizing of an unused remaining portion of a reserved bandwidth during a communication session.

The Applicant maintains that the combination of Chawla and Thomas does not disclose or suggest at least the limitation of “allocating at least a portion of said reserved bandwidth for use by said one or more of said first access device, said first access point and/or said first switch; utilizing said at least a portion of said reserved bandwidth during said communication session; and utilizing at least an unused remaining portion of said reserved bandwidth during at least a second communication session,” as recited by the Applicant in independent claim 29.

Accordingly, the proposed combination of Chawla and Thomas does not render independent claim 28 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 28 is allowable. Independent claims 37 and 45 are similar in many respects to the method disclosed in independent claim 28. Therefore, the Applicant submits that independent claims 37 and 45 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 28.

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B. Rejection of Dependent Claims 29-36, 38-44 and 46-53

Based on at least the foregoing, the Applicant believes the rejection of independent claims 28, 37 and 45 under 35 U.S.C. § 103(a) as being unpatentable over Chawla in view of Thomas has been overcome and requests that the rejection be withdrawn. Additionally, claims 29-36, 38-44 and 46-53 depend from independent claims 28, 37 and 45, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 29-53.

In general, the Office Action makes various statements regarding claims 29-53 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

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CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 29-53 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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